

Serial: 147454

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99015-SCT

*IN RE: LOCAL RULES OF THE SIXTH
CHANCERY COURT DISTRICT*

ORDER

This matter is before the Court en banc on the petition for approval of the revised Rules of Practice and Procedure filed by the Honorable J. Max Kilpatrick and the Honorable Edward C. Fenwick of the Sixth Chancery Court District . The proposed rules are attached as Exhibit A.

Having considered the petition, the Court finds that the revised Rules will promote the fair and efficient administration of justice and that the petition should be granted.

IT IS THEREFORE ORDERED that the petition for approval of the revised Rules of Practice and Procedure filed by the Honorable J. Max Kilpatrick and the Honorable Edward C. Fenwick of the Sixth Chancery Court District is hereby granted.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)*.

SO ORDERED, this the 13th day of May, 2008.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING JUSTICE

TO GRANT: ALL JUSTICES

Exhibit A

**LOCAL RULES
FOR
SIXTH CHANCERY COURT DISTRICT OF MISSISSIPPI**

Pursuant to Rule 83 of the Mississippi Rules of Civil Procedure and Uniform Chancery Court Rule 1.06, the following rules shall govern practice and procedure in the Sixth Chancery Court District, subject to Supreme Court approval.

RULE 1. ASSIGNMENT OF TERMS OF COURT

The terms of Court of this District are assigned to the Judges as follows:

Attala County	2 nd Mon., January,	2 weeks -----	Fenwick
	2 nd Mon., April,	1 week -----	Kilpatrick
	2 nd Mon., July	2 weeks -----	Kilpatrick
	2 nd Mon., October,	1 week -----	Fenwick
Carroll County, 1 st District	4 th Mon., January,	1 week -----	Kilpatrick
	4 th Mon., June,	1 week -----	Fenwick
Carroll County, 2 nd District	3 rd Mon., April,	1 week -----	Fenwick
	3 rd Mon., October,	1 week -----	Kilpatrick
Choctaw County	3 rd Mon., March,	1 week -----	Fenwick
	3 rd Mon., June,	1 week -----	Kilpatrick
	3 rd Mon., September,	1 week -----	Kilpatrick
	3 rd Mon., December,	1 week -----	Fenwick
Kemper County	2 nd Mon., March,	1 week -----	Fenwick
	2 nd Mon., June,	1 week -----	Kilpatrick
	2 nd Mon., September,	1 week -----	Kilpatrick

	2 nd Mon., December,	1 week -----	Fenwick
Neshoba County	4 th Mon., February,	1 week -----	Kilpatrick
	4 th Mon., May,	2 weeks -----	Fenwick
	4 th Mon., August,	1 week -----	Fenwick
	4 th Mon., November,	2 weeks -----	Kilpatrick
Winston County	3 rd Mon., January,	1 week -----	Kilpatrick
	4 th Mon., March,	2 weeks -----	Kilpatrick
	4 th Mon., July	1 week -----	Fenwick
	4 th Mon., September	1 week -----	Fenwick

RULE 2. ASSIGNMENT OF CASES TO JUDGES

(a-1) After the approval of these Rules by the Supreme Court, all cases except Youth Court, Mental Commitments and Drug and Alcohol Commitments will continue to be assigned to a Judge immediately upon the filing of the complaint by the use of a web based Computer program which shall be programmed to randomly select judges by a software algorithm which shall duplicate a mathematical random selection. The Clerk shall obtain the random judge selection by accessing web address www.courttools.com or some other web address which may be designated by this Court by Order of the Judges of this District and forwarded to the Clerks of the Sixth Chancery District. Access to the random judge selection function of the web address shall be by unique User ID and Password for each clerk. After obtaining a judge assignment, the Clerk shall print the judge assignment from the web page and docket and file assignment as the first document in the court file. Once a case is so assigned to a judge, only the judge to whom it is assigned will consider the matter, EXCEPT: (1) where the judge must recuse himself for good cause, (2) where the judge to whom it is assigned will be unavailable for at least five days to consider the matter for reasons such as

sickness, duties outside the district, seminars and vacations, then the other judge may consider emergency matters, ex parte matters and uncontested or agreed matters. When a judge has signed an order under the above exception, it shall remain the case of the judge to whom it was originally assigned.

Any order entered by the judge to whom a case is not assigned under the provision of said item (2) shall contain an explanation of the basis for the non-assigned judge signing the order.

(a-2) If either Judge Kilpatrick or Judge Fenwick is assigned a case wherein an immediate family member is an attorney of record, the case shall be automatically assigned to the other Judge. To compensate for the reassignment, the next case assigned to the Judge that got the reassigned case, shall be automatically assigned to the other Judge. Both Judges shall be notified immediately by the Clerk when this procedure is utilized.

(a-3) In situations involving Administrations, Conservatorships and/or Guardianships arising from the same set of facts or involving the same family that are filed and result in multiple causes, all such cases shall be assigned to the Judge to whom the first case filed was assigned.

(b). Because of the urgency of mental, alcohol and drug commitments they shall be assigned by the clerk to the most readily available judge. However, the first attempt shall be made to assign all of such cases in Neshoba, Winston, and Kemper Counties to Judge Kilpatrick and all of such cases in Attala, Choctaw, and Carroll to Judge Fenwick.

(c). Youth Court cases and cases filed under §41-41-53 Miss. Code of 1972, Annotated, from Attala, Kemper and Winston Counties shall be assigned to Judge Kilpatrick. Youth Court cases and cases filed under §41-41-53 Miss. Code of 1972, Annotated, from Carroll, Neshoba and Choctaw Counties shall be assigned to Judge Fenwick. This system shall be used because many of these are urgent matters and there is need for coordination between the Court, the County Attorney, the

Department of Human Services and Law Enforcement. In cases involving shelter hearings and detention hearings which are urgent, the other judge may hear the case when the designated Youth Court Judge is not available.

(d). All cases filed before the implementation of these new rules, which have previously been heard or set by a judge will be heard by the judge who has already begun the case. All Department of Human Services child support cases and all estate and guardianship matters, which have previously been considered by both judges, are assigned to the judge who signed the last order in the cause.

(e). All cases heretofore assigned to Judge Love, either by the random assignment method or by virtue of the signing of the last order, are hereby assigned to Judge Fenwick, except that all cases assigned to Judge Love in which Edward C. Fenwick served as counsel shall automatically be assigned to Judge Kilpatrick. All cases heretofore assigned to Judge Prisock, either by the random assignment method or by virtue of the signing of the last order, are hereby assigned to Judge Kilpatrick except that all cases assigned to Judge Prisock in which J. Max Kilpatrick served as counsel shall automatically be assigned to Judge Fenwick.

RULE 3. TRIAL SETTINGS

(a). Pursuant to Rule 40 of the Mississippi Rules of Civil Procedure matters other than Motions and initial Rule 81 matters may be set for trial by the following methods.

1. On order of the Court upon request of counsel for all parties, any contested matter may be set for trial at any time with the approval of the Chancellor, Court Administrator or Staff Attorney. When an attorney receives a particular date, he is representing to the Court that the case is ready for trial on that date and no impediment exist to a trial on that date. A matter is not firmly set for a date until an order is signed by the Judge setting it.

2. On motion of any party for a trial setting as provided by MRCP 40 (a), after duly giving notice of a hearing on such motion, the Court will enter an order setting the matter for trial, if it determines it is ready for trial.

(b). Motions may be noticed for hearing on Motion Days or at such other times as can be arranged with the Court.

(c). Settings for Rule 81 (d)(5) actions:

In any action instituted under the provisions of Rule 81 (d) (5) summons may be issued returnable to a Motion Day established in these rules. No special order shall be required to so set such cases. However, it should be noted that such a date is a return date only and this date should not be considered a firm trial date, but a date at which uncontested matters may be heard and matters which require very short hearings, normally less than thirty (30) minutes, may be heard. Other cases will be continued to a day certain at a time and place convenient to the attorneys and the Court. Cases set pursuant to Rule 81 (d) (5) which are not made returnable to a Motion Day shall require a Special Order setting the same.

(d). Uncontested fault ground divorces and irreconcilable difference divorces will be heard only during regular Terms of Court, on the Motion Days hereinafter designated, or on a day when the cause is scheduled for trial as a contested matter. These will only be heard in the county where they are filed. In Carroll County irreconcilable difference divorces may be presented in either district, but fault ground divorces will be heard in the district where they are filed. As provided in Rule 8.05 of the Uniform Chancery Rules, each party in every domestic case involving economic issues shall file with the Court and provide the opposite party or counsel, if known, the disclosures required by said rule.

(e). Ex parte matters will be considered on the Motion Days hereinafter designated or at such other times as may be scheduled by the Court.

RULE 4. MOTION PRACTICE

The Court will hold Motion Days as prescribed by Rules 78 and 83 of the Rules of Civil Procedure in each county of the district each month. Any party may notice a motion for hearing on any of these days. A copy of the notice of hearing on a motion should be mailed to the Chancellor who is to hear the motion. The motions will be heard in the order the notices are received by the Chancellor unless for good cause the Chancellor determines deviation from that order should be made. If all matters noticed for a particular Motion Day cannot be heard on that day, an order will be entered on that day continuing them to another day, and the entry of such continuance order shall constitute notice to all parties who have notice of the hearing of the new time and place for hearing.

The following days are hereby designated as Motion Days for this District:

FOR CHANCELLOR J. MAX KILPATRICK:

ATTALA COUNTY - the second and fourth Thursdays of each month in the Chancery Court Building in Kosciusko at 9:00 A.M.

CARROLL COUNTY FIRST JUDICIAL DISTRICT - the second Wednesday of each month at 9:30 A.M. in Carrollton.

CARROLL COUNTY SECOND JUDICIAL DISTRICT - the second Wednesday of each month at 1:30 P.M. in Vaiden.

CHOCTAW COUNTY - the fourth Wednesday of each month at 9:00 A.M. in Ackerman.

KEMPER COUNTY - the third Tuesday of each month in the Courthouse in DeKalb at 9:00 A.M.

NESHOBA COUNTY - the first and third Thursdays of each month in the Courthouse in Philadelphia at 9:00 A.M.

WINSTON COUNTY - the first Wednesday of each month in the Courthouse in Louisville at 9:00 A.M.

FOR CHANCELLOR EDWARD C. FENWICK:

ATTALA COUNTY - the first and third Thursday of each month in the Chancery Court Building in Kosciusko at 9:00 A.M.

CARROLL COUNTY FIRST JUDICIAL DISTRICT - the first Tuesday of each month in the Courthouse in Carrollton at 9:00 A.M.

CARROLL COUNTY SECOND JUDICIAL DISTRICT - the first Tuesday of each month in the Courthouse in Vaiden at 1:30 P.M.

CHOCTAW COUNTY - the second Tuesday of each month in the Courthouse in Ackerman at 9:00 A.M.

KEMPER COUNTY - the second Friday of each month in the Courthouse in DeKalb at 9:30 A.M.

NESHOBA COUNTY - the second Wednesday and fourth Thursday of each month in the Courthouse in Philadelphia at 9:00 A.M.

WINSTON COUNTY - the second Thursday of each month in the Courthouse in Louisville at 9:00 A.M.

RULE 5. NOTICE REQUIREMENTS

A. It shall be the duty of each attorney who obtains a trial setting, who obtains the continuance of a setting, or who obtains a dismissal of an action to notify the Clerk, Judge and Court Reporter of the time and place of such settings and of any cancellation or change in setting dates.

B. On motions for modification of divorce judgements and for contempt citations notice to the attorney of record at the preceding hearing in the matter will not be sufficient. In these matters notice shall be given to the last counsel of record and summons shall be issued to the respondent to said Motion.

RULE 6. ADMINISTRATIVE MATTERS

The Chancery Clerks of the District are to retain in their possession and control all court files, and no attorney or other person shall be allowed to take court files out of the clerk's offices except by special order of the Chancellor to whom the case is assigned, or where the attorney representing

one of the parties to the action removes the file to take it to the Chancellor in another county of the district when a hearing in the matter is set for the other county. All files so removed from the clerk's office by the attorney shall be returned within twenty-four business hours of the time of removal. Nothing in this rule shall prohibit the clerk from making copies of documents in the court file except as prohibited by law in confidential matters or where a file has been ordered sealed.

ORDERED this the 5th day of March, 2008.

J. MAX KILPATRICK

EDWARD C. FENWICK